IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 892 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
GOPALBHAI MAGANBHAI KOLI & 1 - Opponent(s)

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Appearance :
MS DARSHANA PANDIT, APP, for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.
MR RD RAVAL for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 20/12/2007

ORAL JUDGMENT

1. The present acquittal Appeal has been filed by the State, under Section 378 Cr.P.C., against the Judgment and Order dated 9.6.1999, rendered

in Criminal Case No.8283 of 1996 by the learned Civil Judge (SD) & Judicial Magistrate, First Class, Surendranagar. The said case was registered against the present respondents – accused for the offence punishable under Sections 447, 341, 506(2), 114 of Indian Penal Code. The said Judgment of the trial Court has been challenged by the State on the ground that the Judgment and order passed by the learned Magistrate is against the law and evidence on record.

2. According to the prosecution case, on 13.10.1996 near the Water Tank, behind Jani Colony, Surendranagar, the respondents have carried out illegal construction on the plot which is of the ownership of the original complainant and on the way of godown (Godam) the present respondents have constructed Kachha Chhapra and the way of the original complainant was closed. When the complainant requested the respondents – accused he was threatened by the present respondents. Thus, the respondents – accused have committed the offence of trespass and wrongfully restraining and criminal intimidation and they have abetted each other in commission of the said offence. So the complainant has filed complaint against the present respondents u/ss. 447, 341, 506(2), 114 I.P. Code. Thereafter, the charge-sheet was filed against the present respondents and the charge was framed against

the respondents – accused. The accused pleaded not guilty to the charges. Then the prosecution has led oral as well as documentary evidence and then at the conclusion of the trial, the learned trial Judge has found no substance in the prosecution case and, therefore, acquitted both the respondents – accused from the said offence vide impugned Judgment. The said Judgment of the trial Court has been challenged by the State on the ground that the Judgment and order passed by the learned Magistrate is against the law and evidence on record.

3. I have heard learned APP Ms. Darshana Pandit on behalf of the Appellant – State Government and learned Advocate Mr. R.D. Raval, appearing on behalf of the respondents – accused. I have also gone through the Judgment and order passed by the trial Court.

4. It is contended by learned APP Ms. Darshana Pandit that sufficient oral as well as documentary evidence was produced before the trial Court, but the trial Court has not considered the said evidence in favour of the prosecution and wrongly acquitted the said respondents from the charges levelled against them. It is also contended by the learned APP that the original complainant was a sole owner of the said land and he was empowered and entitled to use the way to Godown (Godam) and

both the respondents have created hurdles/ obstacles and they have wrongly restrained the complainant and also committed criminal trespass. She has also contended that from the oral evidence of witnesses it is established by the prosecution that the present respondents have committed criminal intimidation and they have abetted each other, yet, the trial Court has not considered the entire evidence of the prosecution as a whole which has been led before the trial Court and wrongly held that the prosecution has failed to prove its case beyond reasonable doubt.

5. Learned Advocate Mr. Raval, appearing on behalf of the respondents – accused has contended that the prosecution has failed to establish the particular area which was used by the present respondents and failed to connect them and to establish that from the conduct of the present respondents the prosecution has proved the ingredients of Section 503 I.P. Code. He has also contended that so far as the question of abetment and abettor, from the whole evidence of the prosecution, the prosecution has failed to establish that both the respondents are the abettors and they abetted each other. He has also contended that the ownership of the disputed place is not established by the prosecution. So, the question of the easement right would not arise. He has also contended

that looking to the definition of Section 441 I.P. Code, the main ingredients are not satisfied and have not been proved by the prosecution. He has also contended that so far as Section 339 I.P. Code is concerned, the prosecution has failed to establish that the original complainant was wrongfully restrained by the present respondents.

6. I have gone through the Judgment and order passed by the trial Court. I have also appreciated the documentary as well as oral evidence and also the legal submissions made by both the learned Advocates. So far as the provision of Section 447 I.P. Code is concerned, ingredients of Section 441 of I.P. Code is required to be proved by the prosecution, which are as under, as Section 447 I.P. Code simply provides punishment for the offence of “Criminal trespass” which has been defined in Section 441 I.P. Code :

> “Essential Ingredients of criminal trespass are as follows :
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> (i) Entry into or upon property in the possession of another;
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> (ii) If such entry is lawful, then unlawfully remaining upon such property;
>
> (iii) Such entry or unlawful remaining must be with intent -
>
> (a) to commit an offence; or

(b) to intimidate, insult, or annoy any person in possession of the property.

The use of criminal force is not a necessary ingredient."

It is pertinent to note that even third part of Section 441 I.P. Code stipulates that even if a person has lawfully entered the premises, he still can be held guilty for the offence punishable u/s. 447 I.P. Code, if "a person has lawfully entered the premises and remains there with the intention of :

i. taking unauthorized possession; or

ii. making unauthorized use of such property; and

iii. fails to withdraw from such property or its possession or use when called upon to do so by notice in writing duly served on him, he commits the offence."

7. So, one of the material and important ingredient is "any person in possession of the property." From the evidence produced by the appellants before the trial Court it appears that the prosecution has not produced any single iota of evidence to show that the original complainant was in possession of the said property and if the said ingredient is not established by the prosecution then the offence under Section 447 cannot be proved. I have also perused the evidence led by the prosecution. It is alleged

by the prosecution that the respondents have committed offence and the original complainant was wrongfully restrained by them. On going through the entire evidence, none of the ingredients of Section 441 I.P. Code have been fulfilled for constituting offence u/s. 447 of I.P. Code and hence learned trial Judge has rightly acquitted the accused persons.

8. So far as offence of “wrongful restraint” under Section 341 I.P. Code is concerned, the same is defined in Section 339 of I.P. Code, which says that in order to constitute an offence of “wrongful restraint” the following ingredients must be established, viz.

“(1) that there is an obstruction; (2) that the obstruction prevents a person from proceeding in any direction, and (3) that the person so proceeding must have a right to proceed in the direction concerned.”

The last ingredient “right to proceed in the direction concerned” is to be considered which is important. Now from the papers produced before me it appears that when the right of the ownership regarding the disputed place is not established, then the prosecution cannot plead that the respondents have no right to proceed in the direction of the disputed place. It appears that the prosecution has failed to establish the

said right to proceed the original complainant.

9. It is also alleged by the prosecution that the original complainant was intimidated by the present respondents. Looking to the ingredients of Section 503 I.P. Code, the following things are required to be proved by the prosecution -

(1) Threatening a person with any injury

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested,

(2) The threat must be with intent

(i) to cause alarm to that person, or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

From the oral as well as documentary evidence which is produced before this Court, in my view the prosecution has failed to establish that the original complainant was intimidated by the present respondents, as none of the above mentioned ingredients are fulfilled.

10. I have also gone through the provision of

Section 107 and 108 I.P. Code. Meaning of the abettor and abetment is prescribed in the said provision. In view of the said provisions it is the duty of the prosecution to establish its case beyond reasonable doubt and to prove the version of the prosecution in the light of the ingredients enumerated in the aforesaid provisions of law. In my view the prosecution has failed to establish that the respondents – accused have committed the offences alleged against them. It is the duty of the prosecution to prove its case beyond reasonable doubt, but, the prosecution has failed in doing so. From the papers it appears that the witnesses who have been examined by the prosecution as the prosecution witnesses all are relatives of the complainant. No independent witness has been examined.

11. Looking to the evidence of the complainant, he has deposed before the trial Court in his oral evidence that the respondents told Rajubhai that if complaints comes they will beat him. From the oral evidence of witness Mahendra, it transpires that the said version is not stated by him. Panch witness Mukeshbhai is a servant in the factory of the complainant's uncle and he has not explained before the police regarding the contents of the panchnama and he has simply signed the panchnama. It is also established that the disputed place is situated in a local

residence area and the Investigating Officer has not bothered to record any single statement of nearby residents of the said place. The complainant and witness Mahendra both are related to each other and witness Mahendra has contested the election with the brother of the present complainant. It is also established that both have very good relations. It also appears from the papers that the prosecution has failed to prove the conduct of the respondents - accused regarding the offence under Section 341 I.P. Code. It also transpires that before the trial Court the prosecution has failed to prove the ownership of the disputed place. Therefore, I am of the opinion that the trial Court has rightly turned down the evidence and held that the present respondents have not committed any single wrong. It also appears that the trial Court has rightly held that the prosecution has failed to prove its case beyond reasonable doubt.

12. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons and for the

reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

13. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 9.6.1999 passed by the learned Civil Judge (SD) & J.M.F.C., Surendranagar in Criminal Case No. 8283 of 1996 acquitting the respondents – accused, is hereby confirmed. The respondents – accused are on bail, their bail bonds stand cancelled.

(Z.K.SAIYED,J.)

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